United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL

77-4171

United States Court of Appeals
For the Second Circuit

B P/S

CAMILLO RIZZUTO,

Petitioner,

against

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

Petition For Review of a Final Order of
The Board of Immigration Appeals

APPENDIX

FRIED, FRAGOMEN, DEL REY & O'ROURKE, P.C.
Attorneys for Petitioner
515 Madison Avenue
New York, N.Y. 10022

JOSEPH P. MARRO,
Of Counsel

UNITED STATES COURT OF APPEALS
FILED
JAN 23 1978
A. DANIEL FUSARO, JR.
SECOND CIRCUIT

Dick Bailey Printers, 290 Richmond Ave., Staten Island, N.Y. 10302
Tel.: (212) 447-5358

PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

	Page
Decision and order of the Board of Immigration Appeals, dated August 25, 1977.	1a
Decision of the Immigration Judge, dated September 8, 1976.	4a
Transcript of the deportation hearing held on August 11, 1976.	9a
Application for Advance Permission to Return to Unrelinquished Domicile.	32a
Order to Show Cause and Notice of Hearing.	34a

Decision and order of the Board of Immigration Appeals, dated August 25, 1977

United States Department of Justice

Board of Immigration Appeals

Washington, D.C. 20530

AUG 25 1977

File: A14 354 767 - Hartford

In re: CAMILLO RIZZUTO aka CARMELLO RIZZUTO aka VINCENZO CONSEULLA

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Joseph P. Marro, Esquire
Fried, Fragomen & Del Rey, P.C.
515 Madison Avenue
New York, NY 10022

ON BEHALF OF I&N SERVICE: George Indelicato
Appellate Trial Attorney

ORAL ARGUMENT: August 4, 1977

CHARGE:

Order: Sec. 241(a)(11), I&N Act (8 U.S.C. 1251 (a)(11)) - Conviction for a crime related to illicit traffic in narcotic drugs

APPLICATION: Relief under section 212(c) of the Immigration and Nationality Act or, in the alternative, voluntary departure

The respondent appeals from a decision of an immigration judge dated September 6, 1976. In his decision the immigration judge found the respondent deportable as charged, denied his application for relief under section 212(c) of the Immigration and Nationality Act and ordered his deportation to Italy. The appeal will be dismissed.

The respondent is a 41-year-old native and citizen of Italy. On November 12, 1965 his status was adjusted to that of an alien admitted for lawful permanent residence. On April 30, 1974 the respondent was convicted in the United States District Court for the Southern District of New York for conspiracy to violate 21 U.S.C., sections 812, 841(a)(1) and 841(b)(1)(A) and for the unlawful possession with intent to distribute 13 kilograms (approximately 28.6 lbs.) of heroin hydrochloride. The District Court's judgment against the respondent was affirmed by the United States Court of Appeals for the Second Circuit on November 4, 1974.

At the hearing the respondent admitted the allegations of fact in the Order to Show Cause and conceded deportability under section 241(a)(11) of the Act. The only issue on appeal is the denial, in the exercise of discretion, of the respondent's application for relief under section 212(c) of the Act. 1/

The record establishes that the respondent has been married to a United States citizen for over 12 years. The respondent is the father of three United States citizen children. His brother is a United States citizen and his mother is an alien lawfully admitted for permanent residence.

The testimony elicited at the hearing is to the effect that the respondent's family ties to his wife and children are very strong. The testimony is further to the effect that the respondent would encounter difficulty in adjusting to life in his native country and that his deportation would entail hardship to his family. It appears that the respondent has behaved well while in prison.

Although we recognize fully the respondent's residency and family equities, we are convinced that in this case the respondent's equities are not sufficient

---

1/ The respondent also applied to the immigration judge in the alternative for voluntary departure. The immigration judge found the respondent ineligible for that relief. The immigration judge properly denied voluntary departure. See Matter of Chang, Interim Decision 2550 (BIA 1977). The respondent does not challenge on appeal the denial of that relief.

to overcome the adverse factors that militate against the favorable exercise of discretion.

The respondent's convictions are recent. The respondent was not merely convicted for possession of heroin, but was convicted for the possession and conspiracy to possess a substantial amount of heroin for distribution.

In view of the foregoing, the appeal will be dismissed.

ORDER: The appeal is dismissed.

Chairman

DECISION OF THE IMMIGRATION JUDGE, DATED SEPTEMBER 8, 1976

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

File: A14 354 767 - Hartford

SEP 8 1976

In the Matter of)

CAMILLO RIZZUTO)
aka
CARMELLO RIZZUTO) IN DEPORTATION PROCEEDINGS
aka
VINCENZO CONSEULLA)

Respondent-)

CHARGE: I&N Act, Section 241(a)(11) - conviction for a crime related to illicit traffic in narcotic drugs

APPLICATION: Voluntary departure and return to an unrelinquished domicile under Section 212(c)

IN BEHALF OF RESPONDENT

Fried, Fragomen & Del Rey, Esqs.
515 Madison Avenue
New York, N.Y. 10022
By Joseph P. Marro of Counsel

IN BEHALF OF SERVICE

Milton Meyers, Esq.
Trial Attorney
New York, N.Y. 10007

DECISION OF THE IMMIGRATION JUDGE

The respondent is a 40 year old married male alien. He is a native and citizen of Italy whose immigration status was adjusted to that of a permanent resident on November 12, 1965.

On April 30, 1974, in the United States District Court for the Southern District of New York, a judgement of guilty on a charge of possessing with intent to distribute heroin was entered. The convictions were for violation of Title 21, United States Code Sections 812, 841(a)(1) and 841(b)(1)(A) and Section 2 of Title 18 United States Code, and for conspiracy to violate the

same Sections under Title 21 United States Code Section 846, as charged in an indictment which was filed on September 13, 1972. The judgement of the District Court was affirmed by the United States Court of Appeals, Second Circuit, on October [illegible] 1974 and judgement entered in the District Court on November 4, 1974. Because of that conviction the respondent is subject to deportation on the charge set forth in the Order to Show Cause as he admits. Italy has been designated as the place to which he wishes to be sent if deported.

The respondent has filed an application for permission to return to a lawful unrelinquished domicile pursuant to Section 212(c) of the Immigration and Nationality Act, 8 USC 1182(c). This application is made on the basis of the recent decision of the United States Court of Appeals, Second Circuit, in the case of Francis v. INS, 532 F.2d 268, (2d Cir. 1976).

The respondent is married to a citizen of the United States and is the father of three children, a daughter, Rose, aged 9, a second daughter, Maria, aged 8 and a son, John, aged 3.

He is presently serving the sentence imposed by the Court by reason of his conviction at the Federal Correctional Institution in Danbury, Connecticut. He was sentenced to a period of four years on each of two counts to run concurrently. The probation authorities at the Federal Correctional Institution have advised the Service that the respondent is scheduled for his first appearance before the parole board in April of 1977. On that appearance, if the subject is then under an order of deportation, he would, in all likelihood, be paroled solely for the purpose of execution of that deportation order.

Section 212(c) of the Act, as interpreted in Francis, supra, would permit the discretionary grant of relief from deportation notwithstanding the fact that he is within a class of aliens described in paragraphs (1) through (25) and (30) and (31) of Section 212(a). He must first show that he has had a lawful unrelinquished domicile of seven consecutive years. He must then demonstrate that he is worthy of that relief. In the instant case the respondent, for example, could not establish that he is a person of good moral character since he falls within the provisions of Section 101(f)(3) and (7) by reason of his convictions and the fact that he has been incarcerated and will continue to be incarcerated for a period in excess of 180 days. Although good moral character is not a requirement for the grant of Section 212(c) relief, it is a factor to be taken into account in considering whether, as a matter of discretion, the respondent has demonstrated that he merits that relief. Matter of N, 7 I&N Dec. 368 (BIA 1956).

In addition to the fact that the respondent cannot show good moral character, it is appropriate to consider the nature of the criminal activity which resulted in his criminal conviction. Counsel for the respondent has alluded to the fact that the respondent was the least important of the five co-conspirators involved in the conspiracy to which the indictment speaks. This is to some extent borne out by the probation report which shows that one co defendant is deceased and three are fugitives. The substantive crime, for which the respondent was indicted and convicted, was that he and one of the co conspirators on May 9, 1972 had possession of 13 kilograms of heroin hydrochloride. In short, the operation in which the respondent was involved was by no means a small time operation. Moreover, the respondent has been

6A

49

unable to show any gainful employment except for the period between 1969 and 1971 when he apparently worked as a presser in a factory in Brooklyn. He testified that he has not been employed since 1971. He attributed this to the fact that he had been arrested. However, the indictment in the case was not filed until September of 1972 and the respondent was, as conviction record shows, at large, under bond, until sometime after the judgement of the Court of Appeals was entered in November of 1974. Thus, the respondent was engaged in no regular lawful employment for a period of three years prior to his incarceration. His wife and children are presently being supported by welfare from the City of New York or the State and Federal government.

Even if the respondent were granted the relief which he seeks, which in effect would immunize him from deportation under the existing charge, it would not result in his family being withdrawn from the relief roles, nor would it benefit the public welfare in any apparent respect. Moreover, the respondent would continue his incarceration for a period of at least 11 months beyond the possible release date under an order of deportation. The earlier release for deportation would result in substantial saving of the cost of his present incarceration.

The respondent's deportation would obviously result in hardship to his family for whom he apparently has shown attachment as reflected in the probation report and the testimony of his wife. It is an unfortunate fact, however, that the respondent's present position results from his conduct, which was not only contrary to the criminal laws, but also contrary to the interests of his

family and community. Under the circumstances, the grant of the extraordinary relief which he seeks will be denied. There is no sound basis for granting this respondent's application while he remains a federal prisoner. His conduct at the present time is necessarily circumscribed by the fact of incarceration. There has been no period of rehabilitation and no concrete evidence that the respondent would not, in the future, engage in conduct similar to that which resulted in his present incarceration.

The request for relief under Section 212(c) will be denied, in the exercise of discretion.

Respondent also requested relief from deportation by way of voluntary departure. As already indicated, the respondent is precluded by the statute from establishing good moral character. To qualify for voluntary departure, Section 244(e) requires that an applicant show that he is a person of good moral character. In the circumstances of this case, he would have to show that he has been such for a period of 10 years subsequent to the conviction on April 30, 1974. He therefore cannot show statutory eligibility for the relief which he seeks and that relief will be denied.

ORDER: IT IS ORDERED that the respondent be deported from the United States to Italy on the charge contained in the Order to Show Cause.

FRANCIS J. LYONS
Immigration Judge

HEARING HELD ON AUGUST 11, 1976

IMMIGRATION JUDGE TO RESPONDENT THROUGH INTERPRETER:

Q What is your name?

A Camillo Rizzuto.

Q Mr. Marro is your attorney?

A Yes.

IMMIGRATION JUDGE TO COUNSEL:

Q You are ready Mr. Marro?

A We are ready, your Honor.

IMMIGRATION JUDGE TO RESPONDENT:

Q Mr. Rizzuto would you stand and raise your right hand. You solemnly swear the testimony you give in this proceeding is the truth, the whole truth and nothing but the truth so help you God?

A I do.

IMMIGRATION JUDGE TO COUNSEL:

Q Mr. Marro on behalf of your client you concede service of the Order To Show Cause?

A We do your Honor.

Q You waive the reading of the content?

A We do your Honor.

Q You concede the truth of the five factual allegations?

A We do your Honor.

Q And you concede deportability on the charges?

A We do your Honor.

Q Is there a request for some discretionary relief?

A Yes Judge, we have a request for relief from deportation

under Section 212(c) of the Immigration and Nationality Act especially as interpreted by the Francis Decision which I am sure your Honor is well aware of. Francis is cited at 532 Fed. 2d at page 268. We have the form I-191, Application for Advance Permission to Return to Unrelinquish Domicile, which pertains to Section 212(c) relief. At this time we would file it with your Honor unless your Honor prefer that we file it directly with the Immigration Service in New York.

Q Alright, I'll take it here. You can have it. Do you have the fee?

A Yes, Judge we have the fee, I take it you want an original and one copy and a check for $50 deposit, the filing fee.

Q I don't know whether I want it. Alright then the fee will then be received in caution. You can get a receipt from them.

A Fine, Judge.

IMMIGRATION JUDGE TO RESPONDENT:

Q Alright this is your signature Mr. Rizzuto?

COUNSEL TO IMMIGRATION JUDGE:

Q Are we back on the record Judge?

A Yes.

RESPONDENT TO IMMIGRATION JUDGE:

A Yes.

IMMIGRATION JUDGE TO COUNSEL:

Q Now, you have a 325. It is the biographical information form?

A No, I don't have that completed yet, Judge. I can submit that also to Hartford.

Q Now, you want to elicit some testimony in support of this request?

A Yes Judge we are prepared to go ahead with testimony and documentation in support of the request. I notice your Honor has not marked the Order To Show Cause into evidence, perhaps you ought to do that.

Q But you haven't noticed correctly, because I already have.

A You have Judge.

Q Without necessarily requesting your lead to do so. I'm going to mark your application as Exhibit No. 2.

A Yes sir, that would be my next suggestion.

Q I believe the District Director may want the 325, assuming that he may wish to conduct an investigation. Perhaps not he may want to rest on what we claim here this morning. However, I will assume for the moment that they will want the 325 so you furnish that to the Hartford office.

A Yes sir.

IMMIGRATION JUDGE TO RESPONDENT:

Q Alright, just so I have certain information that I would like to have. When is the maximum, or rather when is the minimum expiration of your term, Mr. Rizzuto, or do you know? The minimum expiration, when is he suppose to be released at the earliest date?

A I have to see what the Appeal Board in 1977.

IMMIGRATION JUDGE TO COUNSEL:

Q Maybe we ought to have the conviction record marked too, Mr. Marro, you've seen this?

A May I just take a quick look at it, Judge.

IMMIGRATION JUDGE TO RESPONDENT:

Q 1977?

A I have to find out, I don't know yet.

IMMIGRATION JUDGE TO COUNSEL:

Q No objection to the conviction record?

A No objection your Honor.

Q Alright, do you have any documents you want to submit in support of this Mr. Marro, before you are questioned?

A Well Judge I think I can probably put whatever documents I have in either through the testimony or at the end of the hearing if your Honor has no objections. I have one letter on behalf of Stanhope Street Block Association which I could offer.

Q I would rather take it now.

IMMIGRATION JUDGE TO TRIAL ATTORNEY:

Q Any objections Mr. Meyers?

A No objection.

IMMIGRATION JUDGE TO COUNSEL:

Q Alright, that will be Exhibit No. 4. Anything else?

A Judge may I see the Progress Report which the Government has in it possession. I spoke to Mr. Paul D. Smithers who is the senior case manager for the U.S. Bureau of Prisons,

and he said it would be made available to me?

IMMIGRATION JUDGE TO TRIAL ATTORNEY:

Q Do you have it yet, Mr. Meyers?

A No. If you give me a moment I could just step out and see if he.

Q Yes, see how long it is going to take?

IMMIGRATION JUDGE TO COUNSEL:

Q Mr. Marro I am showing you the inditement as a separate exhibit, any objection counsel?

A No we have no objection your Honor.

Q That will be 5. Do you want to question Mr. Marro?

A Yes, Judge while we are waiting for the Progress Report we can proceed with the case.

COUNSEL TO RESPONDENT THROUGH INTERPRETER:

Q Mr. Rizzuto when were you married?

A June 7, 1965.

Q Were you married to Maria Rizzuto?

A Yes.

COUNSEL TO IMMIGRATION JUDGE:

Q Judge at this point will offer into evidence the marriage certificate of Mr. and Mrs. Rizzuto.

A I have no objection Mr. Marro.

TRIAL ATTORNEY TO IMMIGRATION JUDGE:

A I have no objection.

IMMIGRATION JUDGE TO COUNSEL:

A Go ahead, that will be Exhibit No. 6.

COUNSEL TO RESPONDENT:

Q Do you have any children Mr. Rizzuto?

A Yes.

Q How many children do you have?

A Three.

Q What are their names?

A Rose, John, and Maria.

IMMIGRATION JUDGE TO COUNSEL:

Q Well we have those on the application, Mr. Marro? Wait a minute, wait a minute, wait a minute, we have those on the application so you don't have to go over anything that is on it.

A Fine, Judge I have the birth certificates of each of the children. Perhaps they should, however, be introduced into evidence.

Q Alright, suppose you submit the copies of these birth certificates, these aren't going to reproduce. You are going to have to spend $2 for these. You might as well get the same kind for consistency purposes. Submit those to the District Director in Hartford and I'll mark them at that time when they reach me.

A Make that cumulative Exhibit No. 7?

Q Well I'll mark it when I get it. It will probably be number 7, but I don't know what others we have. Go ahead.

COUNSEL TO RESPONDENT:

Q Mr. Rizzuto, since you were married, have you been employed?

A Yes.

Q Where were you employed?

A I was in a place in Brooklyn.

Q And were you employed during the periods 1965 through 1971?

A Yes.

IMMIGRATION JUDGE TO RESPONDENT:

Q Wait a minute, what kind of work do you do?

A Pressman.

Q Printing or pressing?

A Pressing clothes.

Q In a factory?

A Yes.

Q How much did you earn?

A I was doing piecework and I make about $140 to $150 a week.

IMMIGRATION JUDGE TO COUNSEL:

Q Alright, hold on a minute, now you have this Progress Report suppose youtake a look at that.

OFF THE RECORD.

ON THE RECORD.

IMMIGRATION JUDGE TO COUNSEL:

Q You have the Progress Report do you want that included in the record?

A Yes, Judge I received the Progress Report from Mr. Smithers it is dated April 12, 1976 regarding Mr. Rizzuto, and I would offer that into evidence.

TRANSCRIPT OF HEARING

FORM I-299 (9-28-65)

United States Department of Justice — Immigration and Naturalization Service

IMMIGRATION JUDGE TO TRIAL ATTORNEY:

Q Alright, there is no objection then Mr. Meyers?

A No.

IMMIGRATION JUDGE TO COUNSEL:

Q And I have also been furnished with the copy of the record of admission for the permanent residence which was under Section 245 as of November 12, 1965, which I think you want part of the record?

A Yes Judge, I will offer that into evidence as the next Exhibit.

Q Alright, we will make that Exhibit No. 7 and the Progress Report Exhibit No. 8.

A Judge, with regard to the Progress Report, I had a conversation with Mr. Paul D. Smithers of this Institution with regard to his willingness or ability to appear at this hearing to give testimony. He siad he would be happy to give whatever oral testimony your Honor desired, but it is a policy of the Institution that he not presently appear. But I would suggest your Honor if you wished to call him that he can be present.

Q Well I don't know is he going to tell me any different from the report?

A I would suspect not Judge.

Q I don't know that he will add anything.

A Fine Judge.

Q The report seems to be relatively complete and fine as

information he would have. Unless the Government wants it done?

TRIAL ATTORNEY TO IMMIGRATION JUDGE:

A No I don't think so.

IMMIGRATION JUDGE TO COUNSEL:

Q No I don't really believe he could add that much.

A Fine, Judge.

Q Alright, what else, do you want to continue?

A May I continue?

COUNSEL TO RESPONDENT:

Q Mr. Rizzuto you have testified that you worked from 1965 to 1971, have you worked after 1971?

A No.

Q Why have you not been able to work?

IMMIGRATION JUDGE TO COUNSEL:

Q He didn't say he wasn't able, but I'll permit this obviously leading the question.

RESPONDENT TO COUNSEL:

A I was looking for a job but they refused to give me a job because of this matter.

COUNSEL TO RESPONDENT:

Q When you say this matter you are talking about your criminal problems?

A Yes.

Q Do you have any relatives here in the United States Mr. Rizzuto?

17A

72

A Yes.

Q Is your mother a permanent resident of the United States?

A Yes.

Q And you also have a brother who is a United States citizen?

A Yes.

Q Mr. Rizzuto if you were deported to Italy would you be able to find employment in Italy?

A I don't think so.

Q Do you feel.

IMMIGRATION JUDGE TO RESPONDENT:

Q Why don't you think you would be able to get a job in Italy?

A In Italy it is very different from here. My, what I live, the village where I live is very small and they don't have any factories or anything, where I could look for jobs.

Q Where is that in Italy?

A Castellamare Del Golfo, Province of Trapani.

Q How do you spell that?

TRIAL ATTORNEY TO IMMIGRATION JUDGE:

A Trapani.

IMMIGRATION JUDGE TO RESPONDENT:

Q I didn't know that, I wonder where that is in Italy?

A Sicily.

Q Is it on a road map? Alright, go ahead Mr. Marro.

COUNSEL TO RESPONDENT:

Q Mr. Rizzuto, how much education have you had?

A Sixth grade.

18A

73

Q Mr. Rizzuto do you love your wife?

A Yes.

Q And if you were deported would you be able to support your wife in the United States and your family as well as yourself overseas?

A No, impossible.

COUNSEL TO IMMIGRATION JUDGE:

Judge that would conclude my direct examination of Mr. Rizzuto on the application for a 212 relief. In the alternative if your Honor were to deny that we would also apply for voluntary departure.

IMMIGRATION JUDGE:

Which he is not eligible.

COUNSEL:

Well we would still make the application since the 212(c) waiver.

IMMIGRATION JUDGE TO COUNSEL:

Q So you are still asking for the voluntary departure anyway?

A Yes, in the alternative.

IMMIGRATION JUDGE TO TRIAL ATTORNEY:

Q Mr. Meyers, do you want to question?

A I'm going to waive any questioning at this time, your Honor.

IMMIGRATION JUDGE TO COUNSEL:

Q Alright, you want to question, you want to call the wife, is that right?

A Yes, Judge.

FORM I-299
(9-28-65)

TRANSCRIPT OF HEARING
United States Department of Justice — Immigration and Naturalization Service

Q Alright, go ahead.

COUNSEL TO RESPONDENT:

Thank you Mr. Rizzuto.

IMMIGRATION JUDGE TO COUNSEL:

Q Alright, have him sit over there on your right. My right, your left. Mr. Marro?

A Judge, the respondent will now call Mrs. Rizzuto.

IMMIGRATION JUDGE TO WITNESS:

Q What is your name?

A Maria Rizzuto.

COUNSEL TO WITNESS:

Q Pick your voice up.

A Maria Rizzuto.

IMMIGRATION JUDGE TO WITNESS:

Q Would you stand and raise your right hand. You solemnly swear the testimony you will give in this proceeding will be the truth, the whole truth, and nothing but the truth so help you God?

A I do. I do, yes.

Q Keep your voice up, alright?

A Yes.

IMMIGRATION JUDGE TO COUNSEL:

Go ahead, Mr. Marro.

COUNSEL TO WITNESS:

Q Mrs. Rizzuto, are you a United States citizen by virtue of your birth in this country?

FORM I-299
(9-18-68)

TRANSCRIPT OF HEARING
United States Department of Justice — Immigration and Naturalization Service

A Yes.

Q When were you married to the respondent?

A June 7, 1965.

Q And you, do you have three children?

A Yes.

Q What are their names and ages?

A Rosa.

IMMIGRATION JUDGE TO COUNSEL:

Q We have those, Mr. Marro?

A Fine.

COUNSEL TO WITNESS:

Q Are you presently employed Mrs. Rimunto?

A No.

Q When did you last work?

A 1966.

Q For whom did you work at that time?

A Dunn and Brad Street.

Q What was your position with Dunn and Brad Street?

A I was a telephone operator.

Q Have you worked since 1966?

A No.

Q Are you able to work since 1966?

A Not with my children.

Q Where are you presently living?

A 321 Stanhope Street.

Q Do you have an apartment there?

A Yes.

Q How much do you pay for your apartment?

A $100.

Q How are you able to sustain yourself while your husband has been incarcerated?

A I am on Welfare.

Q How much do you receive from Welfare?

A $120 every two weeks.

Q Do you have any relatives here in the United States?

A Yes.

Q Who are they?

A I have my mother and my father.

Q Are they United States citizens?

A Yes.

Q How old is your father?

A 73.

Q And your mother?

A 65.

Q Are either of them working?

A No they are both retired.

Q Mrs. Rizzuto can you describe your relationship with your husband?

A I love my husband, I want him to stay.

Q Do the children love their father also?

A Yes, the children are very close to their father.

Q If your husband were to be deported what would be the effect

on you and your family?

A It would ruin my life, ruin my marriage.

Q Would you be able to follow your children, your husband to Italy?

A I would be able to follow him, but I wouldn't put that burden on the children.

Q You want your children to stay in the United States and grow up in this country?

A Yes.

Q Do the children?

A My children don't know that their father is in prison.

IMMIGRATION JUDGE TO WITNESS:

Q Where do they think he is?

A They think he is working out of town.

COUNSEL TO WITNESS:

Q Have they been up here to see him?

A Yes.

Q And when they see him they think that he is working here, is that what you are saying?

A Yes. My son is three years old and when we come up that road he says, look mommy, there is daddy's factory.

IMMIGRATION JUDGE TO WITNESS:

Q But your daughter is ten years old?

A My daughter is nine years old.

Q She has been up here?

A Yes.

23 A

78

Q She doesn't know what this is?

A No she doesn't. Most recently they put up signs in the prison hall. It says Federal Prison System, and my daughter asked me she said, mommy, why does that say prison? I said it is the alarm service.

Q Do you think that is fair to her?

A I think that is fair to them.

Q You don't think she is going to learn sometime?

A I hope she learns when she is old enough to understand it. Because at this time my daughter is very close with her father, and I think it would kill her knowing that her father is in prison.

Q Alright, go ahead.

COUNSEL TO WITNESS:

Q Can you tell us the incident what happened last Christmas time with regard to your daughter's letter to your husband?

A My daughter wrote a letter to her father. It was around Christmas and she wanted her father to come home for Christmas holiday, and her father said that he couldn't come home. So she told him to tell the boss that if he doesn't give you leave that you were going to quit the job.

Q And what about your son, John, has he said anything to you or your husband about his relationships with his father?

A Well every time he comes up here tells his father to come home with him. Tells him there is room on the bus. Tells him come and work in Brooklyn.

FORM I-299
(9-28-65)

TRANSCRIPT OF HEARING
United States Department of Justice — Immigration and Naturalization Service

COUNSEL TO IMMIGRATION JUDGE:

Judge I have no further questions of Mrs. Rizzuto at this time.

IMMIGRATION JUDGE TO TRIAL ATTORNEY:

Q Mr. Meyers?

A I waive any questioning of Mrs. Rizzuto at this time.

IMMIGRATION JUDGE TO COUNSEL:

Q You want to call?

A Yes, Judge at this time the respondent would like to call Father Coin who is at the hearing today.

Alright.

IMMIGRATION JUDGE TO WITNESS:

Q What is your name?

A Reverend Edwin J. Coin.

Q Alright, would you raise your right hand. You solemnly swear the testimony you give in this proceeding will be the truth, the whole truth, and nothing but the truth so help you God?

A I do.

Q Alright, sit down.

IMMIGRATION JUDGE TO COUNSEL:

Go ahead, Mr. Marro.

COUNSEL TO WITNESS:

Q Father Coin are you familiar with Camillo Rizzuto the respondent in this action?

A Yes, Mr. Marro is it?

25A

80

Q Mr. Marro.

A Yes, I, I know Camillo very well and I'm talking as a priest. He has been very active in our Catholic program here in the Institution.

Q Father Coin can you just describe to the best of your ability in whatever you can, your knowledge of Mr. Rizzuto, and your opinion of his character, and that is all I really intend to ask you. Anything you can say favorable to him we would of course would like for the record.

IMMIGRATION JUDGE TO WITNESS:

Well anything unfaverable the Government would want you to tell.

WITNESS TO COUNSEL:

A Well I know Camillo, he is a quiet man, very responsible here at the Institution insofar as his work record and his living habits and patterns. My relationship is, aside from these observations, center around his participation in a lot of our programing and assisting to provide for our Catholic residents. I also know Mr. Rizzuto from the viewpoint of his family, I met his mother, I met Gloria, I met his mother-in-law Jenny Rizzo. I know these people and see them in the visiting room, I know there are strong family ties that are there, and these are things I work very hard to, you know cement, while men are incarcerated these things are very, very important. in my capacity as a Chaplain in this Institution. So my relationship with Camillo in a spiritual way has been an

excellent one, I have seen strong family support, he has conducted himself here at this Institution in a very admirable and gentlemanly way and he is to be commended for that.

COUNSEL TO WITNESS:

Thank you Father Coin, I really have no further questions to ask of him.

IMMIGRATION JUDGE TO WITNESS:

Q You don't have anything bad?

A Pardon your Honor?

Q I said you don't have anything bad?

A No, no I don't know of anything bad.

TRIAL ATTORNEY TO IMMIGRATION JUDGE:

I waive any questions your Honor.

IMMIGRATION JUDGE TO COUNSEL:

Q Anything else Mr. Marro?

A No sir. Judge, we don't intend to call any further witnesses. I would just like to again suggest to the Court that this is a discretionary application. I'm sure your Honor will consider the testimony.

Q I won't need all that, I'm going to do what is appropriate.

A I would only like to just read from the transcript one or two sentences regarding the Government's opening statement which may be helpful to your Honor. I don't think it is.

Q Wait, wait, in the?

A In the opening statement in the criminal case the Assistant

United States Attorney.

Q If you are going to give me any of that you will have to give it all.

A Well my only reluctance in giving it all, is that there are 171 excerpts.

Q I don't want to take piecemeal, excerpts which you have taken. Has the Government seen this?

A I would be happy to show it to the Government. The only item that I really want to put in there is the Government opening statement which describes Mr. Rizzuto as being a minor figure in the case. I will be happy to put in the whole opening statement in.

Q Well obviously he is a minor figure in the case from the probation report. I have already learned that. He is a minor figure because he is the only one that is in jail. One of the co-conspirators is dead and the three of them are fugatives.

A Right, that is correct your Honor, we have no dispute as to that but.

Q You suggest that he was the low man on the totem pole. He was the only one that couldn't get away.

A Well he was the only one that may not have tried to get away, Judge because of his minor role. But I do think that of course it is a discretionary relief.

Q Well I just wanted to point that out to you. These things aren't, one little excerpt doesn't really tell me much. If

you want to go into the criminal case I think you are obligated to go in in depth.

A Well Judge I would respectively disagree with you, your Honor.

Q That is my opinion, anyway what you have said is on the record. So, we have what we have.

A Fine, Judge.

Q I don't know whether the District Director wants to do an outside investigation relative to the family or otherwise, but he may want a control in this one. I will assume that the Service may wish to conduct an investigation for the moment. If they choose to conduct the investigation, then Mr. Meyers will advise you and I will reserve decision pending the completion of the investigation and further inquiries that may be generated by that. If on advise that the Service is prepared to rest on the record as is, without any further inquiry in the field then I will proceed to a decision on this record.

A Yes Judge now as to the Exhibits.

Q Now one thing more, which I think you would want the Service to ascertain at some degree of accuracy is when, what the possible release dates are, and how they would be effected by a deportation order from me at this time. The Progress Report is somewhat indefinite as to that. So perhaps the District, at a minimum Mr. Meyers you could find that out through the District in Hartford. That information could be

given to me in a memorandum with a copy to Mr. Marro.
Is that agreeable Mr. Marro?

A Yes it is Judge. There are two things. The birth certificates and the marriage certificate I will send directly to Hartford, but would your Honor want a copy of it directed to him since you will be rendering the decision in this case?

Q No, I will send the whole record to Hartford and if you have any additional material there give it to Silma, no I am not going to take the record with me.

A Fine one other thing I would like on the record. We have been advised that because of the detainer lodged against Mr. Rizzuto by the Immigration Service that as a result of that he has problems in visiting with his wife and is prevented from going home on weekends.

Q Well that is the prison regulations or institutional regulation that is something, if you want to discuss it at all you have to take it up with the District Director. Obviously, I have no jurisdiction to tell anybody what to do.

A I have attempted to and I have been somewhat forestalled in my attempts by both the prison and as well as speaking to the Immigration Service in New York.

Q Well that is a problem that is obviously an administrative one and not something I can resolve. I certainly can't tell the Warden how to run the place.

A Well the Warden's office tells me it is the Immigration

I-299
3-55

Service that is the one I shall deal with, and maybe the Government.

Q Well I'm not the Immigration Service Mr. Marro, you know that.

A Yes,I do Judge, maybe if the Government Attorney can help us.

Q If there are remedies they would have to lie elsewhere. I am perfectly willing for the Attorney General or the Congress to give me that kind of authority they haven't done it yet. With appropriate compensation of course. Alright, anything else?

COUNSEL:

We have nothing further.

TRIAL ATTORNEY:

Nothing further.

IMMIGRATION JUDGE:

The decision is reserved.

Hearing closed.

I HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF THE FOREGOING PAGES NUMBERS 1 TO 23 ARE A COMPLETE AND ACCURATE TRANSCRIPT OF THE ABOVE DESCRIBED PROCEEDINGS.

Mary M Fournier

Mary M. Fournier

Clerk-Stenographer

Title May 24, 1977

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

Application for Advance Permission to Return to Unrelinquished Domicile

Form Approved
OMB No. 43-R0339

APPLICATION FOR ADVANCE PERMISSION TO RETURN TO UNRELINQUISHED DOMICILE

(Pursuant to Section 212(c) of the Immigration and Nationality Act)

(See instructions on reverse. Please typewrite or print plainly in ink)

FEE STAMP

Alien Registration No.

Date

(1) I hereby apply for permission to return to the United States under the authority contained in Section 212(c) of the Immigration and Nationality Act.

MY NAME IS: (First)	(Middle)	(Last)
CAMILLO		RIZZUTO

DATE OF BIRTH: (Month, day, year)	PLACE OF BIRTH: (City, province, country)	I AM A CITIZEN OF: (Country)
4/29/36	Castellamare Del Golfo, Italy	Italy

PRESENT ADDRESS: (Street and number, apt. no., city, state, country)

(2) I was lawfully admitted to the United States for permanent residence at:

PORT:	DATE: (Month, day, year)	NAME OF VESSEL OR OTHER MEANS OF CONVEYANCE:
New York	Nov. 1965	Adjusted status in New York

(3) Since that admission I have departed from and reentered the United States as follows:

DEPARTED FROM THE UNITED STATES			RETURNED TO THE UNITED STATES			PURPOSE OF TRIP
Port	Date (Month, day, year)	Vessel or Other Means of Conveyance	Port	Date (Month, day, year)	Vessel or Other Means of Conveyance	
New York	8/3/69	Alitalia	New York	9/69	Alitalia	To see family
New York	5/70	Alitalia	New York	9/70	Alitalia	To see family
New York	6/71	TWA	New York	9/71	TWA	To see family

(4) During the past 7 years I have resided at the following places: (List present address first)

(Complete Address - Include Apt. No.)	From -	To -
321 Stanhope St., Brooklyn, N.Y.	Oct. 19 65	Present time
	19	19
	19	19
	19	19
	19	19

(5) During the past 7 years I have been employed as follows. (List present employment first)

From -	To -	Employer's Name	Address	Occupation or Type of Business
19	Present			
1969	1971	F.& F Dress Co.	1363 Myrtle Ave. Bklyn, N.Y.	Presser
1969	1971	Prospect Cloak Co.	Cypress Ave., Brooklyn, NY	Presser
19	19			

(6) My immediate family consists of the following persons:

Name	Relation	Date and Country of Birth	Citizen of	Present Address
Maria	Wife	8/3/42 USA	USA	321 Stanhope, Bkly
Rose	Daughter	11/20/66 USA	USA	" "
Maria	Daughter	9/26/67 USA	USA	" "
John	son	2/20/73 USA	USA	" "

(7) I _____ depart(ed) temporarily from the United States on or about _____ and will remain
(Intend to or have) (Date)

in _____ approximately _____, for the purpose of
(Country) (Length of Time)

_____; and expect to apply for admission at _____.
(Port)

RECEIVED	TRANS. IN	RET'D-TRANS.OUT	COMPLETED

Form I-191
(Rev. 1-1-74)N

32A

99

(8) I believe I may be inadmissible to the United States for the following reasons:

I was convicted of an offense relating to the illicit possession and traffic in narcotics.

I understand that the information herein contained may be used in any criminal or civil proceedings, including deportation or exclusion, hereafter instituted against me.
I certify that the statements above are true and correct to the best of my knowledge and belief.

(Signature of Applicant)

SIGNATURE OF PERSON PREPARING FORM, IF OTHER THAN APPLICANT

I declare that this document was prepared by me at the request of the applicant and is based on all information of which I have any knowledge.

(Signature) (Address) (Date)

Decision:

☐ Application granted upon the following terms and conditions:

DATE OF ACTION DD

DISTRICT

INSTRUCTIONS TO THE APPLICANT

READ INSTRUCTIONS CAREFULLY - FEE WILL NOT BE REFUNDED

(A) This form when completely executed, should be submitted to the District Director of the Immigration office having jurisdiction over your place of permanent residence.

(B) A fee of twenty-five ($25) must be paid for filing this application. It cannot be refunded regardless of the action taken on the application. DO NOT MAIL CASH. ALL FEES MUST BE SUBMITTED IN THE EXACT AMOUNT. Payment by check or money order must be drawn on a bank or other institution located in the United States and be payable in United States currency. If applicant resides in the Virgin Islands, check or money order must be payable to the "Commissioner of Finance of the Virgin Islands." If applicant resides in Guam, check or money order must be payable to the "Treasurer, Guam." All other applicants must make the check or money order payable to the "Immigration and Naturalization Service." When check is drawn on an account of a person other than the applicant, the name of the applicant must be entered on the face of the check. If payment is made by the type of international money order that cannot be mailed, the money order must be drawn on the postmaster of the city in the United States to which the application will be mailed, and that city, the money order number, and the date must be shown clearly on the top margin of the application form.

(C) If the space provided in the form is insufficient to answer a question fully; you should attach a sheet of paper containing your answer which should be numbered to correspond with the question.

(D) In Part (3) where absences have been numerous as a resident alien border crosser or as a seaman it will be sufficient to give the approximate number of such absences and the years covered thereby.

(E) List specifically and in detail your reasons for possible inadmissibility. For example, if application is made because the applicant may be inadmissible due to conviction of crime, the designation of the crime, the date and place of its commission and of conviction therefor, and the sentence or other judgement of the court shall be stated in the application. In the case of disease, mental or physical defect or other disability, give exact description, duration thereof and date and place last treated.

(F) If applicant is mentally incompetent or is under 14 years of age, the application shall be executed by his parent or guardian.

GPO 869-685

100

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

ORDER TO SHOW CAUSE and NOTICE OF HEARING

In Deportation Proceedings under Section 242 of the Immigration and Nationality Act

UNITED STATES OF AMERICA: File No. A14 354 767

In the Matter of CAMILLO RIZZUTO aka CARMELLO RIZZUTO aka VINCENZO CONSULLA Respondent.

c/o Federal Correctional Institution, Danbury, Connecticut
Address (number, street, city, state, and ZIP code)

UPON inquiry conducted by the Immigration and Naturalization Service, it is alleged that:

1. You are not a citizen or national of the United States;
2. You are a native of Italy and a citizen of Italy;
3. You entered the United States at New York, New York on or about August 29, 1964 (date);
4. You were accorded status as a lawful permanent resident of the United States at New York, New York as of November 12, 1965;
5. You were on April 30, 1974, convicted in the United States District Court, Southern District of New York for the offense of possessing with intent to distribute heroin, Schedule I narcotic drug controlled substance;

AND on the basis of the foregoing allegations, it is charged that you are subject to deportation pursuant to the following provision(s) of law:

Section 241(a)(11) of the Immigration and Nationality Act, in that, you at any time have been convicted of a violation of any law or regulation relating to the illicit traffic in narcotic drugs, to wit, possessing with intent to distribute heroin, a Schedule I narcotic drug controlled substance in violation of Title 21 United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).

WHEREFORE, YOU ARE ORDERED to appear for hearing before an Immigration Judge of the Immigration and Naturalization Service of the United States Department of Justice at YOU WILL BE NOTIFIED AT A LATER DATE OF THE TIME AND PLACE OF YOUR HEARING on _____ at _____ m, and show cause why you should not be deported from the United States on the charge(s) set forth above.

Dated: November 4, 1975

W. J. Kennedy
(Signature and title of issuing officer)
Actg' DISTRICT DIRECTOR
HARTFORD, CONNECTICUT
(City and state)

97

34A

Form I-221 (Rev. 7-1-73)Y

(over)

NOTICE TO RESPONDENT

ANY STATEMENT YOU MAKE MAY BE USED AGAINST YOU IN DEPORTATION PROCEEDINGS

THE COPY OF THIS ORDER SERVED UPON YOU IS EVIDENCE OF YOUR ALIEN REGISTRATION WHILE YOU ARE UNDER DEPORTATION PROCEEDINGS. THE LAW REQUIRES THAT IT BE CARRIED WITH YOU AT ALL TIMES

If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Immigration and Naturalization Service. You should bring with you any affidavits or other documents which you desire to have considered in connection with your case. If any document is in a foreign language, you should bring the original and certified translation thereof. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Order to Show Cause and that you are deportable on the charges set forth therein. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. Failure to attend the hearing at the time and place designated hereon may result in a determination being made by the Immigration Judge in your absence.

You will be advised by the Immigration Judge, before whom you appear, of any relief from deportation, including the privilege of departing voluntarily, for which you may appear eligible. You will be given a reasonable opportunity to make any such application to the Immigration Judge.

Failure to attend the hearing at the time and place designated hereon may result in your arrest and detention by the Immigration and Naturalization Service.

REQUEST FOR PROMPT HEARING

To expedite determination of my case, I request an immediate hearing, and waive any right I may have to more extended notice.

_____
(signature of respondent)

Before:

_____
(signature and title of witnessing officer)

_____
(date)

CERTIFICATE OF SERVICE

This order and notice were served by me on November 4, 1975 in the following manner:

✓ ON RESPONDENT - CERTIFIED MAIL - RETURN RECEIPT REQUESTED

CC: Warden
Federal Correctional Institution
Danbury, Connecticut

/rel

_____
(signature and title of employee or officer)

FRANK MACAN, INVESTIGATOR

FRIED FRAGOMEN

AFFIDAVIT OF PERSONAL SERVICE

STATE OF NEW YORK
COUNTY OF RICHMOND ss.:

EDWARD BAILEY being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 23 day of Jan. ,1978 at No. 1 St. Andrews Pl., NYC

deponent servied the within Appellee

upon Thomas Belote, Esq.

the Appellee herein, by delivering | true copy(ies) thereof to him personally. Deponent knew the person so served to be the person mentioned and described in said papers as the Appellee therein.

Sworn to before me this
23 day of Jan., 1978

Edward Bailey

WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, 1978